IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 701 of 1997

Between:

All India Crochet Lace Exporters Asscociation, Rep by its General Secretary A.S.Narayana, R/o Sivalayam Street , Narsapur.

..... PETITIONER

AND

1 The Government Of Andhra Pradesh, Rep by its Secretary, Labour Department, Hyderabad.
2 The Commissioner of Labour, Hyderabad.
3 The Assistent Commissioner of Labour, Eluru, West Godavari District.
4 The Labour Officer, Bhimavaram , West Godavari District.
5 The Assistant Labour Officer, Palakole , West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus , declaring that the artisans who knit the laces and sell the same to an exporter, can never be deemed as "Workman" or an "Employee" of such purchaser within the meaning of any of " The Shops and Establishments Act" ."The Minimum wages Act" or the "Labour welfare Act"; that having regard to the special nature of the service of exporters, such as collecting the lace pieces, exporting them to foreign countries and earning

foreign exchange, cannot be deemed as an establishment; that therefore either the artisans who do the lace work during his/her idle time, by their special art, or the persons who purchase such lace pieces and export them, cannot be governed for any rights or liabilities by either the shops and Establishments Act, the Minimum Wages Act or Labour Welfare Act; that the respondents are not entitled to enforce those said enhancements against any of the exporters either for prosecuting or otherwise; that the enforcement of such laws against the Lace exporters is highly arbitrary, contrary to law, violative of the Constitution of India and the principles of natural justice; and to direct the respondents not to take any action under the provisions of the aforesaid Acts, either against or in favour of the exporters or the artisans of the laces in the ends of justice.

Counsel for the Petitioner:MR.D.RAMALINGA SWAMY

Counsel for the Respondents : GP FOR LABOUR, EMPLOYMENT & TRAINING

The Court made the following :

ORDER:

All India Crochet Lace Exporters Association, represented by its General Secretary, filed the present Writ Petition praying for a writ of

mandamus declaring that the artisans who knit the laces and sell the same to an exporter can never be deemed as “workman” or “employee” of such purchaser within the meaning of any of The A.P. Shops and Establishments Act, 1988, The Minimum Wages Act, 1948 or the A.P.Labour Welfare Fund Act, 1987 having regard to the special nature of service of exporters such as collecting the lace pieces, exporting them to foreign countries and earning foreign exchange cannot be deemed as an establishment; that therefore either the artisans who do the lace work during his/her idle time by their special art or the persons who purchase such lace pieces and export them cannot be governed for any rights or liabilities by either The Shops and Establishments Act, 1988, The Minimum Wages Act, 1948 or the A.P. Labour Welfare Fund Act, 1987; that the respondents are not entitled to enforce those said Enactments against any of the exporters either for prosecuting or otherwise; that the enforcement of such laws against the lace exporters is highly arbitrary, contrary to law, violative of Constitution and the principles of natural justice and to direct the respondents not to take any action under the provisions of the aforesaid Acts, either against or in favour of the exporters or the artisans of the laces in the ends of justice.

The petitioner is a registered society and the main grievance ventilated by the petitioner is that the respondents and their subordinates have been harassing the members of the petitioner

association, lace exporters, by issuing individual notices threatening to prosecute them unless minimum wages are paid and registration is made as ‘establishment’ under The A.P. Shops and Establishments Act, 1988, hereinafter in short referred to as “Act”, for the purpose of convenience. The grievance ventilated by the petitioner in the present Writ Petition is knitting laces is an ancient art and these workers cannot be styled as workers at all but only artisans and there is no employee and employer relationship between these artisans and the purchasers of the lace goods and hence they are not governed by the welfare labour Legislations specified supra and hence these establishments need not be registered under the Act. The stand taken in the counter affidavit is that in the light of the provisions of the Act and also the provisions of the Minimum Wages Act, 1948 and the A.P. Labour Welfare Fund Act 1987 it cannot be said that these workers would not fall under the definition of ‘workmen’ and there is no employer and employee relationship and hence these establishments are to be registered under the Act and they are governed by the provisions of the Minimum Wages Act, 1948 and also A.P. Labour Welfare Fund Act, 1987.

Sri D.Ramalinga Swamy, the learned Counsel representing the petitioner had traced the historical background of this ancient art and would contend that these artisans cannot be styled as workmen so as to attract the Labour Legislations and there is no employer and

employee relationship between these exporters and artisans and hence the provisions of the Act are not attracted and consequently the other Labour Legislations also cannot be made applicable to these Units. The learned Counsel also placed reliance on certain decisions in this regard.

Per contra, the learned Government Pleader for Labour, Employment and Training had taken this Court through the counter affidavit filed by the respondents and would contend that in the light of the specific provisions of the Act and also the provisions of the Minimum Wages Act, 1948 and the A.P. Labour Welfare Fund Act, 1987, taking into consideration the activities of these Units, these Units definitely fall within the meaning of 'commercial establishment' and hence these Units are to be registered under the Act and also these Units are governed by the provisions of the Minimum Wages Act, 1948 and also A.P. Labour Welfare Fund Act, 1987.

Heard the Counsel.

The petitioner society had been constituted and registered for the benefit of exporters of lace goods for solving common problems. The European Community came to India while setting forth their colonies and also missionaries and found that the Indian women who were very poor were dedicated to the domestic life and only seasonal agriculture work and had been idle wasting valuable time and hence

they encouraged the poor women residing in the three coastal Districts i.e., East Godavari, West Godavari and Krishna, to learn the art of lace knitting of fine variety of lace works and finding this as a very good craft most of the poor women residing in these Districts learnt the craft and used to do lace works. It is stated that there is no demand for the lace goods in our country and hence the European missionaries encouraged some people to purchase these lace pieces from the artisans and to export them to foreign countries where there had been good demand for fine lace goods. Thus the entire production of the lace is being exported to the foreign countries such as Australia, England, United States, France and to various other countries. It is also stated that our country is securing a foreign exchange of not less than Rs.50 crore per annum due to these transactions. It is also stated that this art of craft is well flourishing only because of non-interference by the Governmental agencies at any point of time. It is stated that the artisans have no fixed hours and they do not work at any specific place but work only at their respective houses whenever they find time and the artisans are under no obligation to sell their goods only to a particular exporter and they can act at their sweet will and pleasure and hence these artisans would not fall under the definition of ‘workman’ and there is no employer and employee relationship between these exporters and the artisans. It is further stated that the employees of the Labour

Department have been asserting that the lace deals will come within the meaning of the Act and the artisans would fall under the definition of ‘workmen’ and the exporting agencies should register themselves under the provisions of the Act and the Labour Legislations and the provisions thereof are to be followed. Certain notices had been issued and prosecutions had been launched. The petitioner association made several representations both to the Central and the State Governments not to apply the provisions of the Legislations specified supra in relation to the lace work and their exporters. In fact, the Ministry of Commerce, Government of India, New Delhi sent letter dated 27-8-1996 to the then Minister for Labour and Employment, Andhra Pradesh calling for the views regarding the pleas taken by the petitioner association in their representation. It is stated that the State Government had not taken any action thereon. Taking advantage of the same, the officials of the Labour Department have been harassing the lace exporters by issuing individual notices and also threatening to prosecute them unless minimum wages are paid and unless these Units are registered as establishments under the Act. In such circumstances, the petitioner association filed the present Writ Petition.

In the counter affidavit, the facts relating to historical background no doubt had not been specifically denied but it was specifically averred that depending on the demand for the lace products and after getting

samples, the lace manufacturers get lace items manufactured in their Establishments only. However, they also give some work to Home workers who are house wives and used to do lace knitting in their houses. The lace exporters supply thread to the direct workers working in their establishments (usually residential houses of exporters are being used for production of lace items) and also to the house workers while giving the model. After home workers and direct workers knit the lace items as per models, all of them bring the manufactured items to the establishment of the lace exporters to verify them with the model and accept only those items which are in uniformity with the model supplied by them. Rejections will also be there and the home workers and direct workers have to bear the loss. The workers will be paid wages depending on the thread used by them for the production of lace items. Even after acceptance of the manufactured lace items the lace exporters in their establishments get the items finished by giving touches and making minor corrections and get them bundled, packed and exported. For all these purposes, the lace exporters maintain an establishment having some skilled workers to do finishing work and also unskilled workers for miscellaneous works of packing, bundling, exporting and accounts, maintenance etc. The home workers will also be paid basing on their work turn out. Thus it is false to say that there is no employee and employer relationship between the workers and the

lace exporters. It is also stated that due to increase of awareness among workers and Trade Unions about the implementation of Labour Legislations especially the minimum wages and the other welfare Legislations there were several complaints in this regard from East Godavari, West Godavari and Krishna Districts during the past two years in view of the failure to pay minimum wages to these poor workers who are mostly illiterate and unorganized women working without any restriction on hours in case of home workers and working for more than normal working hours in case direct workers straining themselves as the lace manufacturing work required lot of concentration and causes stress on the eyes of the workers but the workers are being exploited by not being paid minimum wages and not restricting the timings of 8 hours as guaranteed under the Act. During the course of meeting with the lace manufacturers association and Trade Unions the lace exporters came forward with a plea that there cannot be restriction on opening hours and closing hours of lace manufacturing Units and for this purpose they were advised to approach the Commissioner of Labour for relaxation from the specific Clauses in the Act. In the counter affidavit different provisions of the relevant Legislations also had been specified in detail and the cases pending in the Court of Judicial First Class Magistrate, Narsapur for not registering the establishments and claims under the Minimum Wages Act 1948 filed before the authority and also the details of

certain lace establishments who had registered under the Act also had been specified.

The main grievance ventilated by the writ petitioner is that there is no employer and employee relationship and these Units would not fall within the meaning of 'commercial establishment' under the Act and hence the Labour Department cannot enforce the welfare Labour Legislations specified supra. Before proceeding to decide the present Writ Petition, the object of these Labour Legislations which are social welfare Legislations made for protecting the workers from exploitation by the employers may have to be kept in mind. The Counsel for the writ petitioner placed reliance on **SHANKAR BALAJI WAJE Vs. THE STATE OF MAHARASHTRA** where the Apex Court had explained the concept of employment under Section 2(1) of The Factories Act, 1948 wherein the Apex Court while dealing with Beedi factory and Beedi roller, in view of the fact that there is no obligation to work in Factory and there was freedom to attend and leave factory at any time and as the payment is being made on the basis of piece work and quantity to be turned out per day not fixed, held that the Beedi roller was not a worker within the meaning of Section 2(1) of the Factories Act, 1948. This view was expressed by the majority in the decision referred to supra and the decision in **CHINTAMAN RAO Vs. STATE OF MADHYA PRADESH** also had been referred to in the

decision referred (1) supra.

The A.P. Shops and Establishments Act, 1988, Act 20 of 1988, is an Act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments and other establishments and for matters connected therewith. Section 2 of the Act deals with definitions. Section 2(5) of the Act defines 'commercial establishment' as hereunder :

> "commercial establishment means an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to such trade, business or profession or which is a clerical department of a factory or an industrial undertaking or which is a commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a co-operative society, an establishment of a factory or an industrial undertaking which falls outside the scope of the Factories Act, 1948 (Central Act 63 of 1948), and such other establishment as the Government may, by notification, declare to be a commercial establishment for the purposes of this Act but does not include a shop."

Section 2(9) of the Act defines 'employer' as hereunder :

> "employer means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes the Manager, Agent or other person acting in the management or control of an establishment".

Section 2(10) of the Act defines 'establishment' as hereunder :

> "establishment means a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial

establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act".

Section 2(11) of the Act specifies that 'factory' means factory within the meaning of the Factories Act, 1948 (Central Act 63 of 1948). Section 2(18) of the Act defines 'register of establishment' as hereunder :

"register of establishment means a register maintained for the registration of establishments under this Act."

Section 2(19) of the Act defines 'registration certificate' as hereunder :

"registration certificate means a certificate issued under this Act".

Section 2(21) of the Act defines 'shop' as hereunder :

"shop means any premises where any trade or business is carried on or where services are rendered to customers and includes a shop run by a co-operative society, an office, a storeroom, godown, warehouse or work place whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification declare to be a shop for the purposes of this Act, but does not include a commercial establishment."

Section 2(23) of the Act defines 'wages' as hereunder :

"wages means every remuneration, whether by way of salary, allowance, or otherwise expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes –

a. any remuneration payable under any settlement between the parties or order of a Tribunal or Court;

b. any remuneration to which the employee is entitled in respect of overtime work or holidays or any leave period;

c. any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

d. any sum which by reason of the termination of employment of the employee is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

e. any sum to which the employee is entitled under any scheme framed under any law for the time being in force; but does not include, -

    i. any bonus, whether under a scheme of profit sharing or otherwise, which does not form part of the remuneration payable under the terms of employment, or which is not payable under any award or settlement between the parties or order of a Court;

    ii. the value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the Government;

    iii. any contribution paid by the employer to any

person or provident fund, and the interest which may have accrued thereon;

iv. any traveling allowance or the value of any travelling concession;

v. any sum paid to the employee to defray special expenses entailed on him by the nature of his employment;

vi. any service compensation payable on the termination of employment in cases other than those specified in sub-clause (d);

vii. the subscription paid by the employee to life insurance and the contribution paid by the employer to the life insurance of the employee under the provisions of this Act and the bonus which may have accrued thereon; or

viii. house rent allowance payable by the employer;

Section 3 of the Act dealing with Registration of Establishments reads as hereunder :

(1) Every employer of an establishment shall -

i. in the case of an establishment existing on the date of commencement of this Act, within thirty days from that date; and

ii. in the case of a new establishment, within thirty days from the date on which the establishment commences its work,

send to the Inspector concerned a statement, containing such particulars, together with such fees, as may be prescribed.

(2) On receipt of such statement, the Inspector shall register the establishment in the register of establishments in such manner as may be prescribed and shall issue in the prescribed

form a registration certificate to the employer who shall display it at a prominent place of the establishment.

(3) Every registration certificate issued under sub-section (2), shall be valid with effect from the date on which it is issued upto the 31st day of December following.

(4) Every employer shall give intimation to the Inspector, in the prescribed form, any change in any of the particulars in the statement made under sub-section (1) within fifteen days after the change has taken place. The Inspector shall, on the receipt of such intimation and the fees prescribed thereof make the change in the register of establishments in accordance with such intimation and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

(5) The employee shall, within fifteen days of the closure of the establishment, give intimation thereof in writing to the Inspector, who shall, on receipt of such intimation, remove the name of the establishment from the register of establishments and cancel the registration certificate :

Provided that, where the Inspector is satisfied otherwise than on receipt of such intimation, that the establishment has been closed, he shall remove the name of such establishment from the register and cancel the registration certificate."

In exercise of the powers conferred by sub-section (1) of Section 71 of the Act, G.O.Ms.No.169, Women's Development, Child Welfare and Labour (Lab.II), dated 28-10-1991, A.P. Shops and Establishments Rules, 1990 were framed and the said Rules came into force with effect from 1-11-1991. Rule 3 dealing with Registration of Establishments and Renewal of Registration Certificate reads as hereunder :

1. The statement specified in sub-section (1) of Section 3 of the Act shall be submitted by the employer in Form-I to the Inspector of the area concerned. The statement shall be accompanied by a challan in support of the

payment of fees prescribed in Schedule-I.

2. The Inspector shall maintain Register of Establishments in Form V.

3. The Inspector shall issue a Certificate of Registration in Form II.

4. Every application for renewal of Registration Certificate made under Section 4 of the Act shall be submitted by the employer to the Inspector of the area concerned in Form III. The application for renewal of Certificate of Registration shall be accompanied by a challan for the fees prescribed in Schedule I.

5. The period of renewal of Certificate of Registration shall be one year or upto three years from the date of its expiry, at the option of the employer.

6. On receipt of application for renewal of Certificate of Registration, the Inspector shall issue Renewal of Registration Certificate in Form IV.

7. Where the application for Renewal of Registration Certificate is not made within the date i.e., at least 30 days before its expiry, penalty as specified shall be levied.

1 . Application submitted on or after 2nd December, but before

31st December - 25% of the fees prescribed.

2. Application submitted on or after 1st January - 50% of the

fees prescribed

Provided that the Government or subject to the control of the Government the Chief Inspector may, if they are or he is satisfied that there is sufficient reason for the employer in not sending the application for the renewal of the Certificate of Registration before the expiry of the time limit specified in sub-section (2) of Section 4, by an order and for reasons recorded therein, waive the payment of penalty either in part or wholly by

the employer in respect of the renewal of the Certificate of Registration applied for."

Rule 29 of the Rules dealing with Maintenance of registers and records and display of notices reads as hereunder :

Every employer shall maintain registers and records and display notices in the following manner :-

1. Every employer shall maintain a Register of Employment in Form XXII.

2. Every employer shall maintain a Register of Wages in Form XXIII.

3. Every employer of an establishment other than a shop shall exhibit in his establishment a notice in Form XXIV specifying the day or days of the week on which his employees shall be given a holiday. The notice shall be exhibited, before the employees, to whom it relates immediately preceding the first week during which it is to have effect.

4. Every employer shall exhibit in his establishment a notice containing such abstracts of the Act and Rules as the Government may direct.

5. Any notice required to be exhibited under these Rules shall be exhibited in such manner that it can be readily seen and read by any person whom it affects and shall be renewed whenever becomes defaced or otherwise ceased to be clearly legible.

6. Every employer shall maintain a Register in Form XXV for the leave granted to persons employed in his establishment.

7. In any register or record which an employer is required to maintain under these rules, the entries relating to any day, shall be made on such date and shall be authenticated under the signature of the employer or

Manager on the same day. The entries relating to overtime work shall be made before the commencement and immediately after completion of such overtime work.

8. The registers, records and notices relating to any calendar year shall be preserved for a period of three years after the last entry is made therein.

9. Save as otherwise provided in sub-rule (4) above, all Registers, records and notices required to be maintained and exhibited shall be either in English or in the language of the majority of the employees in the establishment.

(10)(a) Every employer shall maintain a Visit Book in which an Inspector visiting the establishment may record his remarks regarding any defects that may come to light at the time of his visit or give directions regarding production of any documents required to be maintained or produced under the provisions of the Act and the Rules.

(b) This Visit Book shall be a bound book more or less of size (18cms. x 15 cms.) containing atleast 100 pages.

(c) The first page of the Visit Book shall contain the following particulars:-

i. Name of the Shop or Establishment;

ii. Address;

iii. Registration Number;

iv. Name of the Employer;

v. Father's Name;

vi. Residential Address.

d. In case the Visit Book containing remarks passed by the Inspectors, lost, destroyed or defaced, the employer of the establishment shall report the fact forthwith in writing to the Inspector of the area and immediately

arrange to maintain a new Visit Book.

e. The Visit Book shall be kept always in the business premises or the Establishment and shall be produced or caused to be produced on demand by the Inspector.

(11) Where an office, store-room, godown, warehouse or workplace used in connection with trade and business of a shop is situated at premises other than the premises of the shop, all registers, records, visit book and notices required to be maintained, exhibited or given under the Act and the Rules shall be separately so maintained, exhibited or given in respect of and at such office, store-room, godown, warehouse or workplace.

(12) No employer with intent to deceive shall make or cause or allow to be made, in any register, record or notice prescribed to be maintained under the provisions of the Act or the Rules, an entry which is false in any material particular, or willfully omits or causes or allows to be omitted from any such register, record or notice, an entry which is required to be made therein, under the provisions of the Act and Rules, or maintain or cause or allow to be maintained, more than one set of any register, record or notice.

(13) The name board of every shop or establishment shall be in Telugu and wherever other languages are used, the versions in such other languages shall be below the Telugu version."

Section 2(s) of the Industrial Disputes Act, 1947 defines "workman" as hereunder :

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose

dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison ; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The Minimum Wages Act, 1948, Act 11 of 1948, is an Act to provide for fixing minimum rates of wages in certain employments. Section 2 of the said Act deals with Interpretation and Section 2(e) defines “employer” as hereunder :

“employer means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26-

i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948), as manager of the factory;

ii. in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

Section 2(i) defines “employee” as hereunder :

“employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in any scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.”

Section 2(h) defines “Wages” as hereunder :

“Wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, (and includes house rent allowance), but

does not include –

i. the value of –

   a. any house-accommodation, supply of light, water, medical attendance, or

   b. any other amenity or any service excluded by general or special order of the appropriate Government;

ii. any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

iii. any travelling allowance or the value of any travelling concession;

iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

v. any gratuity payable on discharge;

The A.P. Labour Welfare Fund Act, 1987, Act 34 of 1987, is an Act to provide for the constitution of a Welfare Fund for the financing of activities to promote welfare of labour in the State of Andhra Pradesh and for the establishment of Board for conducting such activities and for matters connected therewith. Section 2(2) of the said Act defines “employee” as hereunder :

‘employee’ means:-

(i) any person who is employed for hire or reward to do any work, skilled or unskilled, manual, supervisory, clerical, or technical, in an establishment for a period of thirty days during the period of twelve months, whether the terms of employment be express or implied; but does not include any person -

a. who is employed mainly in a managerial capacity; or

b. who being employed in a supervisory capacity, draws wages exceeding Rs.1,600 (Rupees sixteen hundred) per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

c. who is employed as an apprentice or on part-time basis.

Explanation: (i) An apprentice means a person who according to the Certified Standing Orders applicable to the establishment is an apprentice or who is declared to be an apprentice by the authority specified in this behalf by the Government; and

(ii) any other person employed in any establishments whom the Government, may by notification, declare to be an employee for the purposes of this Act."

Section 2(3) defines "employer" as hereunder :

"employer means any person who employs either directly through another person either on behalf of himself or any other person, one or more employees in an establishment and includes –

i. in a factory, any person named under Section 7(1)(f) of the Factories Act, 1948 as the manager;

ii. in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

Section 2(4) defines "establishment" as hereunder :

“establishment means –

i. a factory as defined in Section 2(m) of the Factories Act, 1948;

ii. a motor transport undertaking as defined in the Motor Transport Workers Act, 1961;

iii. any other establishment as defined in Section 2(10) of the Andhra Pradesh Shops and Establishments Act, 1966 and includes a society registered under any law in force in the State relating to registration of societies, and a charitable or other trust, whether registered or not, which carries on any business or trade or any work in connection with or ancillary thereto and which employs or on any working day during the preceding twelve months employed twenty or more persons, but does not include an establishment, not being a factory, belonging to or under the control of the Central or any State Government;

Section 2(12) of the said Act defines “wages” as hereunder :

“Wages” means all remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes bonus payable under the Payment of Bonus Act, 1965, but does not include, -

a. the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government.

b. any contribution paid by the employer to any pension fund or provident fund or under any scheme of social

insurance;

c. any travelling allowance or the value of any travelling concession;

d. any sum paid to the employee to defray special expenses entailed on him by the nature of his employment; or

e. any gratuity payable on termination of employment;

In exercise of the powers conferred under Section 37 of the said Act, A.P. Labour Welfare Fund Rules, 1988 in G.O.Ms.No.131, Labour, Employment and Technical Education (Labour-III) dated 25-6-1988 also had been framed and Rule 4 dealing with Maintenance of Registers by the employers reads as hereunder :

(1) Every employer of an establishment shall maintain and preserve for a period of five years:

a. A register of wages in Form D except in cases where a simple register is maintained under any other law for the time being in force, and

b. A consolidated register of unclaimed wages and fines in Form G provided that in respect of cases of pending before the appellate authorities such records register shall be preserved till the cases are finally disposed of.

(2) The employer of an establishment shall by the 31st January of every year forward to the Welfare Commissioner a copy of the extract from the register in Form-E pertaining to the previous year.

Rule 6 dealing with Payment of employer's and employee's contributions specifies as hereunder :

> "Every employer of an establishment operating for any length of period during the twelve months preceding the 31st December of every year shall pay to the Welfare Commissioner or such officer as may be authorized in this behalf, the employers' contribution and also the employees' contribution, whose names stand on the register of establishment preceding the 31st December, by the 31st January succeeding year, along with a statement showing full particulars in Form-F."

I n **VENKATESWAR RAO Vs. SIR SON-IN-LAW LTD. AND OTHERS** the Division Bench while dealing with the aspect whether Birla Institute of Scientific Research is an establishment under the Act held :

> "The Birla Institute of Scientific Research satisfies the triple tests of (1) systematic activity; (ii) organized by the cooperation between employer and employee; (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, and therefore is a commercial establishment and governed by the Act and an Appeal under Section 41 against the establishment therefore lies to the authority."

I n **KODALI NAGAIAH Vs. SRI ARANI KANIAPPA MAISTRY CHOULTRY, NELLORE** the Division Bench while dealing with the aspect whether a choultry would fall under the meaning of establishment, held at paras 7 to 12 as hereunder :

> " I n *Pappuchetti Raghavayya Chetti's Charities v. Commissioner of Labour* (1967-II-LLJ 848), the question was whether the office of the charities falls within the definition of 'shop' under Section 2(16) of the Madras Shops and Establishments Act, Kailasam,J (as hethen was) held that the charities were engaged in the activities of collecting rents from immovable properties and interests on moneys lent, besides

collecting hire charges on the vessels and electricity charges and that the charities had made a profit. Therefore, the office falls within the definition of 'shop' under Section 2(16) of the Madras Shops and Establishments Act.

In *Bayer (India) Limited v. Commissioner of Labour* (1980(1) APLJ 360), a Division Bench of our High Court had considered the question whether a defined premises is an essential requisite for an establishment so as to fall within the definition of 'commercial establishment'. This judgment is of no assistance in regard to the question we are concerned.

In *D.B. Khade v. Ramsingh Jaisingh* (1986 (52) F.L.R. 378), a learned single Judge of the Bombay High Court held that the enterprise carried on by Khanna Construction House by providing accommodation and service to the residents of the house on payment of rent would amount to 'commercial establishment'.

In *G.Venkateshwara Rao v. Sir Silk Limited* (1988-II-LLJ 375), a Division Bench of this Court to which one of us (Syed Shah Md.Quadri,J) was a member, considered the question whether the research institute of the Sir Silk Limited, which was set up with the objects of improving, securing greater efficiency, rationalization, reduction of cost of silk, was a commercial establishment within the meaning of Section 2(5) of the Act. Having taken into consideration the functions of the research institute which included investment in movable and immovable properties, growing of commercial crops and selling the same to industries etc., it was held that it was a commercial establishment within the meaning of the Act.

As noticed above, the Choultry in question is maintaining a lodging house which falls within the expression of 'establishment' as defined in Section 2(10) of the Act. We do not consider it necessary to go into the question whether leasing out its land to a theatre and saw mills and the other buildings to a Bank and other persons would constitute business or trade by the Choultry for purposes of satisfying the requirements of commercial establishment as on a reading of the definition of 'establishment' and 'commercial establishment' it is clear that for being an 'establishment' it need not be a 'commercial establishment' though every commercial establishment falls within the meaning of 'establishment'. The fact that the object of the Choultry is charitable or religious is not, in our view, relevant in construing the definition of 'establishment'.

> Further from the point of view of an employee, it makes very little difference for him whether the object of the employer is religious or charitable or commercial. So far as he is concerned, he does his work. In the instant case the appellant was collecting rents from the lodgers of the lodging house and rendering service to them. How those rents are applied is not his concern and it should not be a relevant factor in determining whether the employer is an establishment within the meaning of the Act or not. The A.P. Shops and Establishments Act is beneficient social legislation intended to serve the cause of labour welfare and to regulate the conditions of employees in shops and commercial establishments, restaurants, theatres and other establishments. When the provisions of the Act are clear and unambiguous, they cannot be so construed as to defeat the very purposes of the legislation merely because the establishment is a charitable institution. Under sub-section (4) of Section 64 of the Act (Section 73(4) of Act 20 of 1988), the Government have power to exempt any establishment or class of establishments from all or any of the provisions of the Act subject to such conditions as they may deem fit. The respondent-choultry does not enjoy exemption from the Government. So long as an establishment, whether religious or charitable, is not exempted by the Government, the provisions of the Act will apply and they have to be given effect to".

In **INDIAN CHAMBERS OF COMMERCE AND INDUSTRY's** case the question was whether the Federation of Indian Chambers of Commerce and Industry is a commercial establishment within the meaning of the Delhi Shops and Commercial Establishments Act, 1854 and it was pointed out that the definition of 'commercial establishment' in that Act is so wide that the activities of a registered society or a charitable trust would also fall within the purview of that definition. In **V.SASIDHARAN Vs. M/s.PETER & KARUNAKAR AND OTHERS** while dealing with the aspect whether firm of lawyers would fall under 'commercial establishment' under Kerala Shops and

Establishments Act 1960 the Apex Court observed at paras 8 and 9 as hereunder :

> "A lawyer's office or the office of a firm of lawyers cannot obviously fall under clauses (30 and (40 above. Nor has the Government issued any notification as contemplated by Section 2(4). The question thus narrows itself into whether a lawyer's office falls under either of the first two clauses.
>
> The expression 'establishment' is defined by Section 2(8) to mean a shop or a commercial establishment. Since by the definition contained in the first clause of Section 2(4), a commercial establishment means an establishment, a place of work cannot be regarded as a commercial establishment unless the activity is conducted in a 'shop' or in a commercial establishment, which is really tautological. The definition of 'shop' which is contained in Section 2(15) shows that in order that an establishment can be regarded as a shop, it is necessary that some 'trade' or 'business' must be carried on there or some service must be rendered to 'customers'. The expression 'shop' also includes offices, warehouses, store rooms or godowns which are used in connection with the trade or business. It does not require any strong argument to justify the conclusion that the office of a lawyer or of a firm of lawyers is not a 'shop' within the meaning of Section 2(15). Whatever may be the popular conception or misconception regarding the role of to-day's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite that, traditionally, lawyers do not carry on a trade or business nor do they render services to 'customers'. The context as well as the phraseology of the definition in Section 2(15) is inapposite in the case of lawyer's office or the office of a firm of lawyers."

In **AUGUSTINE MATHAI Vs. APPELLATE AUTHORITY** a Division Bench of Kerala High Court while dealing with whether a Church would fall under 'shop' or 'commercial establishment' under Kerala

Shops and Commercial Establishments Act, 1960 held that it would be stranger than fiction to hold that the devout who goes to the church was a 'customer' and the church was a commercial establishment where "services are rendered". The church was neither a shop nor a commercial establishment as defined under the Act. The same view was expressed in **AUGUSTINE MATHAI Vs. APPELLATE AUTHORITY .** A Division Bench of Bombay High Court i n **NARENDRA KESHRICHAND FULADI AND ANOTHER Vs. STATE OF MAHARASHTRA** while dealing with Bombay Shops and Establishments Act, 1948 as amended by Maharashtra Act LXIV of 1977 which enlarged the definition of commercial establishment by including establishment of legal practitioners, at para-13 observed :

> "We may not tread the same ground which has been covered by this Court in *Sakharam Narayan Kherdekar's case* supra (1964(1) LLJ 156) which distinguishes the law practice from other commercial ventures. The nature of the law practice, contracted with other commercial ventures, is distinguished by four features, according to Henry S.Drinker in his book "Legal Ethics", page 5. The primary characteristics which distinguish the legal profession from business are : (1) a duty of public service in which one may attain the highest eminence without making such money, (2) a relation as an "officer of Court" to administration of justice involving through sincerity, integrity and reliability, (3) a relation to clients in the highest degree fiduciary, and (4) a relation to colleagues at the bar characterized by candor, fairness and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients. The part a lawyer plays in the administration of justice partakes to some extent or participation in sharing sovereign or regal functions of the State. The discussion in *Bangalore Water Supply and Sewerage Board v. Rajanna and others* (1978(1) LLJ 349) does not touch any of these aspects as it as not necessary there to decide these other questions, in view of the point that

fell for decision there, as to the scope of the definition of "industry" in Section 2(j) of the Industrial Disputes Act. We find that the concept of commercial establishment is very much different from the concept of industry and whatever may have been said in respect of 'industry' cannot be imported while considering the width, nature and the extent for the concept of 'commercial establishment'. In this view which we are taking, we are supported by the observations made by the Kerala High Court in *Sasidharan v. Peter and Karunakaran* (1978 Lab. I.C. 1614)."

I n **RASHEED A. MASKATI AND OTHERS Vs. M.ABBAS ALI HUSSAINI AND ANOTHER** while dealing with whether a trust owning building with tenanted flats let out on rental basis would fall under commercial establishment under the Bombay Shops & Establishments Act, 1948 it was observed at para 20 as hereunder :

"…..There is no doubt that the petitioners have employed various workmen like the liftmen, watchmen, sweepers, pump-attendant etc., and with their help the Trust provided service to the tenants of the flats. There is, therefore, organized labour employed by the Trust. Hence I have no hesitation in coming to the conclusion that in this case, the petitioners-Trust would fall within the ambit of the definition of "commercial establishment" appearing in Section 2(4) of the Bombay Shops and Establishments Act, 1948."

In **Dr.NIRUPAMA RATH Vs. STATE OF ORISSA** while dealing with the aspect whether the clinic run by Doctor is covered by the Orissa Shops and Commercial Establishments Act, 1956 it was held at para-7 as hereunder:

"The expression "establishment" is defined in Section 2(8) to mean a shop or a commercial establishment. Since by the definition contained in the first category of Section 2(4), a

commercial establishment means an establishment, a place of work cannot be regarded as a commercial establishment unless the activity is conducted in a “shop” or any commercial establishment which is readily tautological. The definition of “shop” which is contained in Section 2(19) shows that in order that any establishment can be regarded as a shop, it is necessary that some “trade” or “business” must be carried out there or some services must be rendered to “customers”. The expression “shop” also includes offices, warehouses, storerooms, or godowns which are used in connection with trade or business. The inevitable conclusion is that a doctor’s clinic is not a “shop” within the meaning of Section 2(19). A question arose for consideration in respect of a lawyer’s office in *V.Sasidharan v. Peter and Karunakar* (1984 II LLJ 385). Considering almost in *pari materia* the provision of the Kerala Shops and Commercial Establishments Act (34 of 1960), the Apex Court observed that the office of the lawyer is not covered by the said Act. It is true that Section 2(4) of the Act has used words of very wide import and grammatically it may include even a consulting room where a doctor examined his patients with the help of a solitary nurse or attendant. But, in the matter of construing the language of Section 2(4) of the Act, the principle of *noscitur a sociis* has to be adopted. The presence of the profit motive or the investment of capital tradition associated with the action of trade and commerce cannot be given an undue importance in construing the definition of “commercial establishment” under Section 2(4) of the Act. The correct test of finding whether a professional activity falls within Section 2(4) of the Act is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services of the community or any part of the community with the help of the employees in the manner of a trade or business in such an undertaking. A professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character and unless the profession carried on by a person also partakes of the character of a commercial nature, he cannot fall within the ambit of Section 2(4) of the Act. A person following a liberal profession in any intelligible sense with the active co-operation of his employees and the principal, if not the sole, capital, which he brings into his profession is his special or peculiar intellectual and educational equipment. Considering a similar question in the background of Section 2(4) of the Bombay Shops and Establishment =s Act (79 of 1948), it was held by

the Apex Court in *Dr.Devendra M.Surti v. State of Gujarat* (1969(2) LLJ 116), that a doctor's establishment is not covered."

I n **LIFE INSURANCE CORPORATION Vs. APPELLATE AUTHORITY** the aspect whether L.I.C. would come within the definition of commercial establishment had been dealt with. In **PHILLIPOS & CO. Vs. STATE** the question whether the firm of Chartered Accountants would fall within the meaning of commercial establishment or shop under Karnataka Shops and Commercial Establishments Act, 1961 had been discussed. I n **BANGALORE CLUB Vs. SENIOR LABOUR INSPECTOR** it was held that none of the activities carried by Bangalore Club had an element of trade or business and such club is not a commercial establishment under Karnataka Shops and Commercial Establishments Act, 1961. In **MERCHANT NAVY CLUB Vs. Vs. ASSISTANT INSPECTOR OF LABOUR** it was held that Navy Club is not a shop or establishment within the meaning of the Act. In **S.V. RATNA GUPTA Vs. STATE OF A.P.** it was held that the office of a Chartered Accountant, whether it is an individual or a firm, wherever it is run, would not fall under commercial establishment within the meaning of the Act.

In the light of the decisions referred to supra and also the stand taken in the affidavit filed in support of the Writ Petition by the writ petitioner and the stand taken by the respondents in the counter affidavit and

on a careful scrutiny of the different provisions of the Legislations referred supra, taking into consideration the nature of activities, this Court has no hesitation in holding that the lace knitting Units in the present case fall within the meaning of 'commercial establishment' and thus attracted by the provisions of the Act. It is pertinent to note that in the counter affidavit it had been specifically stated that despite the protest by the petitioner-association, the following lace establishments already had been registered under the Act and contributions had been made under A.P. Labour Welfare Fund Act for the workers employed :

Sl. Name of the Lace Licence No.of Renewed
No. Establishment No. workers upto

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1. P.Veeraiah & Co. Palakole 4293 22 1997
2. P.Venkanna & Co. Palakole 279 46 1997
3. Jain Enterprises, Narasapur 3169 18 1997
4. Sri Koteswara Lace Industry,
Narasampuram 7106 52 1997
5. Godavary Delta Women
Lace Artisans, Coop.
Cottage Industrial Society

Ltd., Narsampuram 7113 35 Due for 1997

6. Sri Kanaka Durga Lace

Industry, Narasapuram 7208 4 1997

7. K.S.Nayadu & Co.,

Palakole 3997 3 1997

No doubt in the counter affidavit certain other details relating to claims under Minimum Wages Act 1948 filed before the Authority had been specified hereunder :

---Name of the No. of Claim Date of Establishment workers amount claim filed

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1. Sri Ramakrishna Paramahamsa

Lace Company, Sitarampuram 42 Rs. 88,693-50 5-6-96

2. Narasamamba Lace Industry, 64 Rs. 72,789-25 5-6-96

Sitarampuram

3. C.V.Chalam & Co. Narasapuram 27 Rs. 91,469-25 23-5-96

4. Koteswari Lace Industry, 34 Rs.1,30,365-00 23-5-96

Narsapuram

5. Kanakadurga Lace Industry,

Narasapuram 4 Rs. 15,990-00 5-6-96

6. P.Veeraiah & Co. Palakole 6 Rs. 13,759-00 23-5-96

7. P.Venkanna & Co. Palakole 42 Rs.1,18,881-00 1-1-96

8. Jain Enterprises, Narsapur 6 Rs. 8,535-00 5-6-96

9. P.Veeraiah & Co. Palakole 22 Rs. 14,154-00 30-8-96

Details relating to the cases in the Court of Judicial First Class Magistrate, Narsapur for not registering the establishments also had been given in the counter affidavit as hereunder :

----------Name of the Establishments No. of workers

----------1. Sri C.V.Chalam, C.V.Chalam & Co.

At Durga, Narsapuram 27

2. Sri Addagalla Upendranath, Narasamamba

Lace Industry, Sitarampuram 64

3. Sri Gangipamula Nageswara Rao, G.N.R. No workers found,

Exports, Opp. To S.B.I. Narasapuram no work is going

by the time of

Inspection.

4. Sri Kolvakolanu Tulasirao,

Sri Ramakrishna Paramahamsa Lace

Company, Sitarampuram 42

Taking into consideration the nature of activities, this Court is of the considered opinion that these Units are definitely governed by the provisions of the Act and also in view of the same the provisions of the Minimum Wages Act, 1948 and also A.P. Labour Welfare Fund Act, 1987 also are applicable to the said Units. As already referred to supra, the object of these Labour Legislations is to protect the

working class from the exploitation at the hands of the employers and the enforcement and implementation of these Labour Legislations aimed at protecting the interests of the working class. Taking into consideration the welfare object of these Legislations, this Court is of the considered opinion that the writ petitioner is not entitled to the relief prayed for in the Writ Petition and accordingly being devoid of merit, the Writ Petition is hereby dismissed, with costs.

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P.S.Narayana.,J

Date : -12-2004

L.R. copy to be marked : YES / NO

AM

To:

One fair copy to the Honourable Mr.Justice P.S. Narayana (for his Lordship's kind perusal)

1 The Secretary to Government Of Andhra Pradesh,
Labour Department, Hyderabad.
2 The Commissioner of Labour,

Hyderabad.

3 The Assistant Commissioner of Labour,
Eluru, West Godavari District.

4 The Labour Officer,
Bhimavaram , West Godavari District.

5 The Assistant Labour Officer,
Palakole , West Godavari District.

6. 2 C.Cs. to Government Pleader for Labour, Employment & Training

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